



# STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.  
*Commissioner*

Wendy E. Saunders  
*Chief of Staff*

September 23, 2008

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Yefim Sosonkin, D.O.

Redacted Address

Rex Whitehorn, Esq.  
Rex Whitehorn & Associates  
98 Cutter Mill Road – Suite 234  
Great Neck, New York 11021

Robert Bogan, Esq.  
NYS Department of Health  
Bureau of Professional Medical Conduct  
433 River Street – Suite 303  
Troy, New York 12180

**RE: In the Matter of Yefim Sosonkin, D.O.**

Dear Parties:

Enclosed please find the Determination and Order (No. 08-86) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct  
New York State Department of Health  
Hedley Park Place  
433 River Street-Fourth Floor  
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

Redacted Signature

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:djh

Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH  
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT

In the Matter of

Yefim Sosonkin, D.O. (Respondent)

A proceeding to review a Determination by a  
Committee (Committee) from the Board for  
Professional Medical Conduct (BPMC)

COPY

Administrative Review Board (ARB)

Determination and Order No. 08-86

Before ARB Members Grossman, Lynch, Pellman, Wagle and Wilson  
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Robert Bogan, Esq.  
For the Respondent: Rex Whitehorn, Esq.

In this proceeding pursuant to New York Public Health Law (PHL) § 230-c  
(4)(a)(McKinney 2008), the ARB considers whether to take disciplinary action against the  
Respondent's license to practice medicine in New York State (License) following the  
Respondent's criminal conviction for a felony under New York Law. After a hearing below, a  
BPMC Hearing Committee determined that the Respondent's criminal conduct constituted  
professional misconduct and the Committee voted to revoke the Respondent's License. Upon  
considering the record below and the parties' review submissions, the ARB affirms the  
Committee's Determination in full.

Committee Determination on the Charges

The Committee conducted a hearing in this matter under the expedited hearing  
procedures (Direct Referral Hearing) in PHL § 230(10)(p). The Petitioner commenced the  
proceeding by a February 19, 2008 Summary Order from the New York Commissioner of Health

suspending the Respondent's License pursuant to the Commissioner's authority under PHL §230(12). The Petitioner alleged that the Respondent committed professional misconduct under the definition in N. Y. Education Law (EL) §§ 6530(9)(a)(i) (McKinney 2008) by engaging in conduct that resulted in a felony conviction under New York Law. In the Direct Referral Hearing, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The evidence at the Hearing demonstrated that the Respondent was convicted in New York State Supreme Court for Westchester County for Grand Larceny in the second degree, a Class C felony under New York Penal Law § 155.40. The Court sentenced the Respondent to five years on probation and to pay \$ 75,000.00 in restitution. The charges related to patient services the Respondent provided as a physician in a "no-fault medical practice" that treated patients who complained of injuries from automobile accidents. The Respondent testified concerning his remorse for his criminal conduct and the Respondent stated that he cooperated with law enforcement officials to assist in obtaining criminal convictions for other persons. Following the Direct Referral Hearing, the Committee rendered the Determination now on review.

The Committee majority rejected the Respondent's claim to be remorseful and the Committee determined that the Respondent cooperated with law enforcement to avoid a prison sentence. The Committee stated that they were unable to ignore that the Respondent worked in the no-fault practice for three years and that the Respondent's felony conviction related directly to his medical practice. The Committee voted to revoke the Respondent's License.

### Review History and Issues

The Committee rendered their Determination on June 3, 2008. This proceeding commenced on June 17, 2008, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's reply brief. The record closed when the ARB received the reply brief on August 11, 2008.

The Respondent asks that the ARB overturn the Committee and reduce the sanction against the Respondent to five years on probation. The Respondent argues that the Committee imposed an overly harsh sanction for the Respondent's conduct and that the Committee ignored mitigating evidence such as the Respondent's cooperation with law enforcement. The Respondent argued further that the Petitioner's delay in bringing this case prevented the Respondent from obtaining evidence concerning his cooperation with law enforcement, in the form of a letter from a former prosecutor. The Respondent argued that two years have passed between the criminal conviction and the Direct Referral Hearing and that the Respondent is unable to contact the former prosecutor. The Respondent also argued that the Committee refused to consider documentary evidence to show that the Respondent was not the owner of no-fault facilities subject to the criminal proceeding.

The Petitioner argued that the Respondent and his attorney were aware at the time of the criminal proceeding that the Respondent could face disciplinary action against his License as a result of a criminal conviction. The Petitioner contends that the Respondent had an opportunity at the time of the conviction to obtain information from the criminal prosecutor concerning cooperation with law enforcement. The Petitioner argued further the Respondent has raised other arguments that amount to an attempt to undermine the criminal conviction in this case. The

Petitioner asks that the ARB sustain the Committee's Determination to revoke the Respondent's License.

### ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law and whether the Penalty is appropriate and within the scope of penalties which PHL §230-a permits. The ARB may substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3<sup>rd</sup> Dept. 1993); in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3<sup>rd</sup> Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3<sup>rd</sup> Dept. 1995). The ARB may choose to substitute our judgment and impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], so the ARB will consider no evidence

from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3<sup>rd</sup> Dept. 1997).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

#### Determination

The ARB has considered the record and the parties' briefs. The ARB affirms the Committee's Determination that the Respondent's criminal activity amounted to professional misconduct. The ARB affirms the Committee's Determination to revoke the Respondent's License.

The Respondent attempted to repudiate his criminal conviction by denying he participated in any fraud or wrongdoing and by asserting that he entered a guilty plea that an Assistant District Attorney scripted. The ARB rejects the Respondent's attempt to re-open his guilty plea. The Respondent should direct any challenge to the criminal conviction to the courts. The Respondent's conviction binds the Respondent in the Direct Referral Hearing. The conviction provided the basis for the Committee to conclude that the Respondent's actions amounted to professional misconduct. The ARB affirms the Committee's refusal to consider evidence to challenge the Respondent's guilt on the criminal charge.

The ARB also rejects the Respondent's argument that delay by the Petitioner in bringing the Direct Referral Proceeding denied the Respondent the opportunity to obtain mitigating

evidence concerning the Respondent's cooperation with law enforcement. The Respondent raised the same argument with the Committee and the Committee found no validity to the claim. The Respondent's attorney at hearing also represented the Respondent in the criminal case and the Respondent's attorney admitted to the Committee that the attorney realized at the time of the criminal proceeding that a criminal conviction could result in an action against the Respondent's License. The ARB agrees that the Respondent had the opportunity to obtain any mitigating information from the criminal prosecutors at the time of the prosecution, for use in a proceeding against the Respondent's License.

The Committee observed the Respondent at the hearing and the Committee majority rejected the Respondent's claims to be remorseful and the Committee determined that the Respondent cooperated with law enforcement to avoid a prison sentence. The ARB defers to the Committee as the finder of fact in their judgment concerning the Respondent's credibility and intentions.

The Respondent used his License to engage in criminal conduct. The ARB agrees with the Committee that the Respondent has proven himself unfit to practice medicine in New York State.



ORDER

NOW, with this Determination as our basis, the ARB renders the following ORDER:

1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to revoke the Respondent's License.

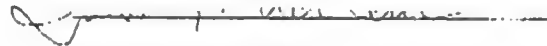
Thea Graves Pellman  
Datta G. Wagle, M.D.  
Stanley L. Grossman, M.D.  
Linda Prescott Wilson  
Therese G. Lynch, M.D.

In the Matter of Yelimir Sosonkin, D.O.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Sosonkin.

Dated: 22 September, 2008

Redacted Signature

A handwritten signature in black ink, appearing to read "Linda Prescott Wilson", written over a horizontal line.

Linda Prescott Wilson

In the Matter of Yefim Sosonkin, D.O.

Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the Matter of Dr. Sosonkin.

Dated: Sept 15, 2008

Redacted Signature

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Thea Graves Pellman

In the Matter of Yefim Sosonkin, D.O.

Datta G. Wagle, M.D., an ARB Member concurs in the Determination and Order in the

Matter of Dr. Sosonkin.

Dated: 9/16, 2008

Redacted Signature

  
Datta G. Wagle, M.D.

In the Matter of Yefim Sosonkin, D.O.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Sosonkin.

Dated September 16, 2008

Redacted Signature

Stanley L. Grossman, M.D.

Stanley L. Grossman, M.D.

In the Matter of Yefim Sosonkin, D.O.

Therese G. Lynch, M.D., an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Sosonkin.

Dated: Sept 16, 2008

Redacted Signature

Therese G. Lynch, M.D.